

#### **54-4-1. General jurisdiction.**

The commission is hereby vested with power and jurisdiction to supervise and regulate every public utility in this state, and to supervise all of the business of every such public utility in this state, and to do all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of such power and jurisdiction; provided, however, that the Department of Transportation shall have jurisdiction over those safety functions transferred to it by the Department of Transportation Act.

Amended by Chapter 9, 1975 Special Session 1

#### **54-4-1.1. Wholesale electrical cooperative exempt from rate regulation -- Requirements for rate increase.**

The commission does not have the authority under the provisions of this title to regulate, fix, or otherwise approve or establish the rates, fares, tolls, or charges of a wholesale electrical cooperative. A wholesale electrical cooperative shall not vary its charges within any type or classification of service to any member or the public, one from the other, or from schedules of rates, fares, tolls, or charges which schedules shall be filed at least annually with the Division of Public Utilities for informational purposes only. The prohibition of this section applies only to the rates, fares, tolls, or charges and does not exempt wholesale electrical cooperatives from other areas of regulation under this title including, but not limited to, regulation having an indirect effect on rates, fares, tolls, or charges but which does not constitute an approval or establishment of them.

A wholesale electrical cooperative must, prior to the implementation of any rate increase after January 1, 1984, hold a public meeting for all its customers and members. Notice must be mailed at least 10 days prior to the meeting. In addition, any schedule of new rates or other change that results in new rates must be approved by the board of directors of the wholesale electrical cooperative.

Enacted by Chapter 50, 1984 General Session

#### **54-4-1.5. Investigations, providing information, audits and recommendations by director.**

In addition to its other powers and duties provided by law, the Public Service Commission may, with respect to any matter within its jurisdiction, order the director of the Division of Public Utilities to:

- (1) conduct research, studies, and investigations;
- (2) provide information, documents or records in compliance with the provisions regarding ex parte communications set forth in Section 54-7-1.5;
- (3) conduct audits and inspections or take other enforcement actions to assure compliance with commission decisions and state and federal laws; and
- (4) make recommendations regarding public utility regulations.

Enacted by Chapter 246, 1983 General Session

#### **54-4-2. Investigations -- Hearings and notice -- Findings -- Applicability of**

**chapter.**

(1) (a) The commission may conduct an investigation if the commission determines an investigation:

- (i) is necessary to secure compliance with this title or with an order of the commission;
- (ii) is in the public interest; or
- (iii) should be made of any act or omission to act, or of anything accomplished or proposed, or of any schedule, classification, rate, price, charge, fare, toll, rental, rule, regulation, service, or facility of any public utility.

(b) If the commission conducts an investigation under Subsection (1)(a), the commission may:

- (i) establish a time and place for a hearing;
- (ii) provide notice to the public utility concerning the investigation; and
- (iii) make findings and orders that are just and reasonable with respect to the investigation.

(2) This chapter does not apply to a schedule, classification, rate, price, charge, fare, toll, rental, rule, service, facility, or contract of an entity described in Subsection 54-2-1(7)(b)(iii) or (iv), (17), or (19)(i), or if the electricity is consumed by an eligible customer for the eligible customer's own use or the use of the eligible customer's tenant or affiliate.

Amended by Chapter 381, 2014 General Session

**54-4-4. Classification and fixing of rates after hearing.**

(1) (a) The commission shall take an action described in Subsection (1)(b), if the commission finds after a hearing that:

(i) the rates, fares, tolls, rentals, charges, or classifications demanded, observed, charged, or collected by any public utility for, or in connection with, any service, product, or commodity, including the rates or fares for excursion or commutation tickets, or that the rules, regulations, practices, or contracts affecting the rates, fares, tolls, rentals, charges, or classifications are:

- (A) unjust;
- (B) unreasonable;
- (C) discriminatory;
- (D) preferential; or
- (E) otherwise in violation of any provisions of law; or

(ii) the rates, fares, tolls, rentals, charges, or classifications described in Subsection (1)(a)(i) are insufficient.

(b) If the commission makes a finding described in Subsection (1)(a), the commission shall:

(i) determine the just, reasonable, or sufficient rates, fares, tolls, rentals, charges, classifications, rules, regulations, practices, or contracts to be thereafter observed and in force; and

(ii) fix the determination described in Subsection (1)(b)(i) by order as provided in this section.

(2) The commission may:

(a) investigate:

(i) one or more rates, fares, tolls, rentals, charges, classifications, rules, regulations, contracts, or practices of any public utility; or

(ii) one or more schedules of rates, fares, tolls, rentals, charges, classifications, rules, regulations, contracts, or practices of any public utility; and

(b) establish, after hearing, new rates, fares, tolls, rentals, charges, classifications, rules, regulations, contracts, practices, or schedules in lieu of them.

(3) (a) If in the commission's determination of just and reasonable rates the commission uses a test period, the commission shall select a test period that, on the basis of evidence, the commission finds best reflects the conditions that a public utility will encounter during the period when the rates determined by the commission will be in effect.

(b) In establishing the test period determined in Subsection (3)(a), the commission may use:

(i) a future test period that is determined on the basis of projected data not exceeding 20 months from the date a proposed rate increase or decrease is filed with the commission under Section 54-7-12;

(ii) a test period that is:

(A) determined on the basis of historic data; and

(B) adjusted for known and measurable changes; or

(iii) a test period that is determined on the basis of a combination of:

(A) future projections; and

(B) historic data.

(c) If pursuant to this Subsection (3), the commission establishes a test period that is not determined exclusively on the basis of future projections, in determining just and reasonable rates the commission shall consider changes outside the test period that:

(i) occur during a time period that is close in time to the test period;

(ii) are known in nature; and

(iii) are measurable in amount.

(4) (a) If, in the commission's determination of just, reasonable, or sufficient rates, the commission considers the prudence of an action taken by a public utility or an expense incurred by a public utility, the commission shall apply the following standards in making its prudence determination:

(i) ensure just and reasonable rates for the retail ratepayers of the public utility in this state;

(ii) focus on the reasonableness of the expense resulting from the action of the public utility judged as of the time the action was taken;

(iii) determine whether a reasonable utility, knowing what the utility knew or reasonably should have known at the time of the action, would reasonably have incurred all or some portion of the expense, in taking the same or some other prudent action; and

(iv) apply other factors determined by the commission to be relevant, consistent with the standards specified in this section.

(b) The commission may find an expense fully or partially prudent, up to the level that a reasonable utility would reasonably have incurred.

Amended by Chapter 11, 2005 General Session

**54-4-4.1. Rules to govern rates.**

(1) The commission may, by rule or order, adopt any method of rate regulation that is:

- (a) consistent with this title;
  - (b) in the public interest; and
  - (c) just and reasonable.
- (2) In accordance with Subsection (1), a method of rate regulation may include:
- (a) rate designs utilizing:
    - (i) volumetric rate components;
    - (ii) demand rate components;
    - (iii) fixed rate components; and
    - (iv) variable rate components;
  - (b) rate stabilization methods;
  - (c) decoupling methods;
  - (d) incentive-based mechanisms; and
  - (e) other components, methods, or mechanisms approved by the commission.

Amended by Chapter 319, 2009 General Session

**54-4-7. Rules, equipment, service -- Regulation after hearing.**

Whenever the commission shall find, after a hearing, that the rules, regulations, practices, equipment, appliances, facilities, or service of any public utility, or the methods of manufacture, distribution, transmission, storage or supply employed by it, are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the commission shall determine the just, reasonable, safe, proper, adequate or sufficient rules, regulations, practices, equipment, appliances, facilities, service or methods to be observed, furnished, constructed, enforced or employed, and shall fix the same by its order, rule or regulation. The commission, after a hearing, shall prescribe rules and regulations for the performance of any service or the furnishing of any commodity of the character furnished or supplied by any public utility, and on proper demand and tender of rates such public utility shall furnish such commodity or render such service within the time and upon the conditions provided in such rules.

No Change Since 1953

**54-4-8. Additions, improvements, extensions, repairs, or changes -- Apportioning costs.**

(1) (a) Whenever the commission shall find that additions, extensions, repairs, or improvements to or changes in the existing plant, equipment, apparatus, facilities, or other physical property of any public utility or of any two or more public utilities ought reasonably to be made, or that a new structure or structures ought to be erected to promote the security or convenience of its employees or the public or in any way to secure adequate service or facilities, the commission shall make and serve an order

directing that such additions, extensions, repairs, improvements, or changes be made or such structure or structures be erected in the manner and within the time specified in the order.

(b) If any additions, extensions, repairs, improvements, or changes, or any new structure or structures which the commission has ordered to be erected, require joint action by two or more public utilities, the commission shall notify the public utilities that the additions, extensions, repairs, improvements, or changes, or new structure or structures have been ordered and shall be made at their joint cost; whereupon the public utilities shall have reasonable time as the commission may grant within which to agree upon the portion or division of cost of the additions, extensions, repairs, improvements, or changes or any new structure or structures which each shall bear.

(2) If at the expiration of the time in Subsection (1)(b) the public utilities shall fail to file with the commission a statement that an agreement has been made for division or apportionment of the cost or expense of the additions, extensions, repairs, improvements, or changes, or of the new structure or structures, the commission shall have authority, after further hearing, to make an order fixing the proportion of the cost or expense to be borne by each public utility and the manner in which the cost or expense shall be paid or secured.

Amended by Chapter 306, 2007 General Session

**54-4-12. Telegraph and telephone -- Connections -- Joint rates -- Division of costs.**

Whenever the commission shall find, after a hearing, that a physical connection can reasonably be made between the lines of two or more telephone corporations, or two or more telegraph corporations, whose lines can be made to form a continuous line of communication by the construction and maintenance of suitable connections for the transfer of messages or conversations, and that public convenience and necessity will be subserved thereby, or shall find that two or more telegraph or telephone corporations have failed to establish joint rates, tolls or charges for service by or over their said lines and that joint rates, tolls or charges ought to be established, the commission may, by its order, require that such connection be made, except where the purpose of such connection is primarily to secure the transmission of local messages or conversations between points within the same city or town, and that conversations be transmitted and messages transferred over such connections under such rules and regulations as the commission may establish and prescribe, and that through lines and joint rates, tolls and charges be made and be used, observed and be in force in the future. If such telephone or telegraph corporations do not agree upon the division between themselves of the cost of such physical connection or connections, or upon the division of the joint rates, tolls or charges established by the commission over such through lines, the commission shall have authority, after a further hearing, to establish such division by supplemental order.

No Change Since 1953

**54-4-13. Joint use of properties by utilities -- Adjustment of costs -- Cable**

**television easement rights.**

(1) Whenever the commission shall find that public convenience and necessity require the use by one public utility of the conduits, subways, tracks, wires, poles, pipes or other equipment, or any part thereof, on, over or under any street or highway, belonging to another public utility, and that such use will not result in irreparable injury to the owner or other users of such conduits, subways, tracks, wires, poles, pipes or other equipment, or in any substantial detriment to the service, and that such public utilities have failed to agree upon such use or the terms and conditions or compensation for the same, the commission may, by order, direct that such use be permitted, and prescribe a reasonable compensation and reasonable terms and conditions for the joint use. If such use is directed, the public utility to whom the use is permitted shall be liable to the owner or other users of such conduits, subways, tracks, wires, poles, pipes or other equipment for such damage as may result therefrom to the property of such owner or other users thereof.

(2) Whenever a public utility including its successors, assigns, lessees, licensees and agents, is granted a right-of-way easement to construct, operate, maintain or remove utility facilities, electric power and other facilities as it may require upon, over, under and across land or upon, over, under and across a dedicated public utility strip, and such public utility has also entered into a pole attachment contract with a cable television company which has been granted a franchise by a city, county, municipal or other public authority including the right to use the wires, conduits, cables, or poles of such public utility, and providing for the attachment or installation of wires, cables, and other equipment of a cable television company, to certain poles or in certain conduits of such public utility under controlled conditions designed to ensure the continued safe operation of the utilities service and facilities without any additional burden on the grantor's property then, and in that event, the cable television company, has the right to share in and enjoy the use of the right-of-way easement, subject to the terms and conditions provided in the pole attachment contract, and the right-of-way easement or interest granted the public utility is apportionable to the cable television company under the following limitations or conditions:

(a) Consent is secured from the private property owner where the easement is located except this requirement shall not apply in the case of a dedicated public utility strip.

(b) The Public Service Commission determines that under the terms and conditions of the pole attachment contract the use of the utilities facilities by the cable television company will not interfere with the primary utility function or render its facilities unsafe, and that the contract is in the public interest.

(c) The right-of-way easement is not restricted to the sole use of the public utility; provided, that such restriction shall not apply in any easement granted for the use of a dedicated public utility strip.

(d) The use contemplated by the cable television company is the same or similar to that granted the public utility and that such use will not impose an additional burden upon the servient tenement.

(e) The use of the easement by the cable television company will not cause irreparable injury or damage to the grantor's property.

Amended by Chapter 117, 1973 General Session

**54-4-13.1. Natural gas vehicle rate.**

(1) The commission may find that a gas corporation's request for a natural gas vehicle rate that is less than full cost of service is:

- (a) in the public interest; and
- (b) just and reasonable.

(2) If the commission approves a gas corporation's request under Subsection (1), the remaining costs may be spread to other customers of the gas corporation.

Enacted by Chapter 303, 2009 General Session

**54-4-13.4. Natural gas fueling stations and facilities -- Recovery of expenditures for stations and facilities.**

(1) The commission shall find that a gas corporation's expenditures for the construction, operation, and maintenance of natural gas fueling stations and appurtenant natural gas facilities for use by the state, political subdivisions of the state, and the public are in the public interest and are just and reasonable, if:

(a) the gas corporation's expenditures for the fueling stations and appurtenant facilities:

- (i) are prudently incurred; and
- (ii) do not exceed \$5,000,000 in any calendar year, unless the commission determines after the first year, through the general rate making process, that a higher amount is appropriate and in the best interest of the public;

(b) the gas corporation shows that the estimated annual incremental increase in revenue related to the stations and facilities exceeds 50% of the annual revenue requirement of the stations and facilities; and

(c) the stations and facilities are in service and are being used and are useful.

(2) (a) A gas corporation may seek the recovery of expenditures under Subsection (1) through a mechanism designed to track and collect the expenditures between general rate cases.

(b) (i) The commission shall allow a gas corporation to recover, through an incremental surcharge to all of its rate classes, expenditures that the gas corporation incurs that are directly related to the construction, operation, and maintenance of the stations and facilities described in Subsection (1), reduced by revenues the gas corporation receives during the same time period directly attributable to the stations and facilities.

(ii) The commission shall assign a surcharge under Subsection (2)(b)(i) to each rate class based upon the pro rata share, approved by the commission, of the tariff revenue ordered in the gas corporation's most recent general rate case.

(iii) A gas corporation may file an application to adjust a surcharge under Subsection (2)(b)(i) as frequently as semiannually.

(iv) At the gas corporation's next general rate case, the commission shall include in base rates all expenditures that the gas corporation prudently incurs associated with a surcharge under Subsection (2)(b)(i).

Enacted by Chapter 311, 2013 General Session

**54-4-14. Safety regulation.**

The commission shall have power, by general or special orders, rules or regulations, or otherwise, to require every public utility to construct, maintain and operate its line, plant, system, equipment, apparatus, tracks and premises in such manner as to promote and safeguard the health and safety of its employees, passengers, customers and the public, and to this end to prescribe, among other things, the installation, use, maintenance and operation of appropriate safety or other devices or appliances including interlocking and other protective devices at grade crossings or junctions, and block or other system of signaling, and to establish uniform or other standards of construction and equipment, and to require the performance of any other acts which the health or safety of its employees, passengers, customers or the public may demand, provided, however, that the department of transportation shall have jurisdiction over those safety functions transferred to it by the Department of Transportation Act.

Amended by Chapter 9, 1975 Special Session 1

**54-4-15. Establishment and regulation of grade crossings.**

(1) No track of any railroad shall be constructed across a public road, highway or street at grade, nor shall the track of any railroad corporation be constructed across the track of any other railroad or street railroad corporation at grade, nor shall the track of a street railroad corporation be constructed across the track of a railroad corporation at grade, without the permission of the Department of Transportation having first been secured; provided, that this subsection shall not apply to the replacement of lawfully existing tracks. The department shall have the right to refuse its permission or to grant it upon such terms and conditions as it may prescribe.

(2) The department shall have the power to determine and prescribe the manner, including the particular point of crossing, and the terms of installation, operation, maintenance, use and protection of each crossing of one railroad by another railroad or street railroad, and of a street railroad by a railroad and of each crossing of a public road or highway by a railroad or street railroad, and of a street by a railroad or vice versa, and to alter or abolish any such crossing, to restrict the use of such crossings to certain types of traffic in the interest of public safety and is vested with power and it shall be its duty to designate the railroad crossings to be traversed by school buses and motor vehicles carrying passengers for hire, and to require, where in its judgment it would be practicable, a separation of grades at any such crossing heretofore or hereafter established, and to prescribe the terms upon which such separation shall be made and the proportions in which the expense of the alteration or abolition of such crossings or the separation of such grades shall be divided between the railroad or street railroad corporations affected, or between such corporations and the state, county, municipality or other public authority in interest.

(3) Whenever the department shall find that public convenience and necessity demand the establishment, creation or construction of a crossing of a street or highway over, under or upon the tracks or lines of any public utility, the department may by



order, decision, rule or decree require the establishment, construction or creation of such crossing, and such crossing shall thereupon become a public highway and crossing.

(4) (a) The commission retains exclusive jurisdiction for the resolution of any dispute upon petition by any person aggrieved by any action of the department pursuant to this section, except as provided under Subsection (4)(b).

(b) If a petition is filed by a person or entity engaged in a subject activity, as defined in Section 19-3-318, the commission's decision under Subsection (4)(a) regarding resolution of a dispute requires the concurrence of the governor and the Legislature in order to take effect.

Amended by Chapter 190, 1999 General Session

**54-4-15.1. Signals or devices at grade crossings -- Duty to provide.**

The Department of Transportation so as to promote the public safety shall as prescribed in this act provide for the installing, maintaining, reconstructing, and improving of automatic and other safety appliances, signals or devices at grade crossings on public highways or roads over the tracks of any railroad or street railroad corporation in the state.

Amended by Chapter 9, 1975 Special Session 1

**54-4-15.2. Signals or devices at grade crossings -- Funds for payment of costs.**

The funds provided by the state for purposes of this act shall be used in conjunction with other available money, including money received from federal sources, to pay all or part of the cost of the installation, maintenance, reconstruction or improvement of any signals or devices described in Section 54-4-15.1 at any grade crossing of a public highway or any road over the tracks of any railroad or street railroad corporation in this state.

Amended by Chapter 342, 2011 General Session

**54-4-15.3. Signals or devices at grade crossings -- Apportionment of costs.**

The Department of Transportation, in accordance with the provisions of Section 54-4-15, shall apportion the cost of the installation, maintenance, reconstruction or improvement of any signals or devices described in Section 54-4-15.1 between the railroad or street railroad and the public agency involved. Unless otherwise ordered by the department, the liability of cities, towns and counties to pay the share of maintenance cost assigned to the local agencies by the department shall be limited to the funds provided under this act. Payment of any money from the funds provided shall be made on the basis of verified claims filed with the Department of Transportation by the railroad or street railroad corporation responsible for the physical installation, maintenance, reconstruction or improvement of the signal or device.

Amended by Chapter 9, 1975 Special Session 1

**54-4-15.4. Signals or devices at grade crossings -- Provision of costs.**

The Department of Transportation shall provide in its annual budget for the costs to be incurred under this act.

Amended by Chapter 9, 1975 Special Session 1

**54-4-16. Investigation and report of accidents.**

The commission shall investigate the cause of all accidents occurring within this state upon the property of any public utility, or directly or indirectly arising from or connected with its maintenance or operation, resulting in loss of life or injury to persons or property and requiring in the judgment of the commission investigation by it, and shall have the power to make such order or recommendation with respect thereto as in its judgment may seem just and reasonable; provided, that neither the order nor recommendation of the commission nor any accident report filed with the commission shall be admitted as evidence in any action for damage based on or arising out of the loss of life or injury to person or property in this section referred to. Every public utility is hereby required to file with the commission, under such rules and regulations as the commission may prescribe, a report of each accident so occurring of such kinds or classes as the commission may from time to time designate. The Department of Transportation where private and public carriers are involved shall have and assume all powers heretofore held by the commission pursuant to this section; provided that the commission shall retain exclusive jurisdiction for the resolution of any dispute upon petition by any person aggrieved by any order of the department issued pursuant thereto.

Amended by Chapter 9, 1975 Special Session 1

**54-4-18. Electric, gas, and water service.**

The commission shall have power, after a hearing, to ascertain and fix just and reasonable standards, classifications, regulations, practices, measurements or service to be furnished, imposed, observed and followed by all electrical, gas and water corporations; to ascertain and fix adequate and serviceable standards for the measurement of quantity, quality, pressure, initial voltage or other conditions pertaining to the supply of the product, commodity or service furnished or rendered by any such public utility; to prescribe reasonable regulations for the examination and testing of such products, commodity or service, and for the measurement thereof; to establish reasonable rules, regulations, specifications and standards to secure the accuracy of all meters and appliances for measurements; and to provide for the examination and testing of any and all appliances used for the measurement of any product, commodity or service of any such public utility.

No Change Since 1953

**54-4-19. Right to enter upon public utility premises.**

The commissioners and officers and employees of the commission and the Department of Transportation, where public carriers are involved, shall have power to enter upon any premises occupied by any public utility for the purpose of making the examinations and tests and exercising any of the other powers provided for in this title and to set up and use on such premises any apparatus and appliances necessary therefor. The agents and employees of such public utility shall have the right to be present at the making of such examinations and tests.

Amended by Chapter 9, 1975 Special Session 1

**54-4-20. Consumer may have meter tested upon paying fee.**

Any consumer or user of any product, commodity or service of a public utility may have any appliance used in the measurement thereof tested, upon paying the fees fixed by the commission. The commission shall establish and fix reasonable fees to be paid for testing such appliances on the request of the consumer or user; the fee to be paid by the consumer or user at the time of his request, but to be paid by the public utility and repaid to the consumer or user under such rules and regulations as may be prescribed by the commission, if the appliance is found defective or incorrect to the disadvantage of the consumer or user.

No Change Since 1953

**54-4-21. Valuation of public utilities.**

The commission shall have power to ascertain the value of the property of every public utility in this state and every fact which in its judgment may or does have any bearing on such value. The commission shall have power to make revaluations from time to time and to ascertain the value of new construction, extensions, and additions to the property of every public utility; provided, that the valuation of the property of all public utilities doing business within this state located in Utah as recorded in accordance with Section 54-4-22 of this chapter shall be considered the actual value of the properties of said public utilities in Utah unless otherwise changed after hearings by order of the commission. In case the commission changes the valuation of the properties of any public utility said new valuations found by the commission shall be the valuations of said public utility for all purposes provided in this chapter.

No Change Since 1953

**54-4-22. Statements of valuations -- Affidavits -- Records of valuation.**

The Public Service Commission must on or before the first day of December of each year furnish every public utility doing business in the state of Utah whose rates are based on the valuation of its properties or the amount of its investments with blank forms providing spaces for statements of the valuation of all of the properties of the public utilities located within this state. Said blank forms shall provide for whatever segregation or division of the values of said properties as the commission may require.

Each blank form shall have affixed thereto an affidavit which must be substantially as follows:

"I, \_\_\_\_\_, do swear that I am \_\_\_\_\_ (position held), of the \_\_\_\_\_ (name of company), and that as such I am in a position to know the valuations of both the tangible and intangible properties of the \_\_\_\_\_ (name of company), located in the state of Utah, and that to the best of my knowledge the above figures represent the true valuations of said properties at 12 noon on the first day of January of the year \_\_\_\_\_".

Said affidavit in addition to the above must state the principal place of business of the public utility and other information required by the commission.

The Public Service Commission shall require every public utility doing business within the state of Utah whose rates are based on the valuation of its properties or the amount of its investments to declare through its authorized agent on said blank forms the full value of all of the tangible and intangible properties of said utility which are located within the state of Utah, and it shall furthermore require that the valuation of the tangible properties be listed separately from the intangible properties. In making this declaration every public utility may take into consideration any increase or decrease in values of its property during the tax year last past and may raise or lower its declared true values accordingly.

The Public Service Commission shall also require that this blank form be filed with the commission on or before a specific date each year to be determined by the commission, and shall require the affidavit of this blank form to be signed and sworn to by a duly qualified and acting officer of the respective public utility in the manner provided by law. The Public Service Commission shall prepare each year a book to be called "Record of Valuations of Utility Companies," in which must be entered the names of every person, organization, or corporation engaged in any utility business in Utah together with the valuation of the tangible and the valuation of the intangible properties of each of said person, organization, or corporation as determined and declared by the duly qualified officers of said public utilities and as declared and filed in accordance with the provisions of this section or as otherwise determined by the commission according to law. The Public Service Commission shall accept the values filed as provided herein unless otherwise changed by the commission upon evidence taken by and filed with the commission as the true values of the tangible and the intangible properties of the public utility and these last declared values shall be the values upon which said utility might earn a fair return. Under no circumstances shall an increase in the rates of any public utility be found justified by the commission if the increase shall result in an earning by the respective utility of an amount greater than a fair return on the value of the properties of the public utility located in the state of Utah as shown on the forms provided herein.

Amended by Chapter 75, 2000 General Session

#### **54-4-23. Accounts and records of utilities.**

The commission shall have power to establish a system of accounts to be kept by public utilities subject to its jurisdiction, to classify said public utilities and to establish a system of accounts for each class and to prescribe the manner in which such accounts shall be kept. It may also, in its discretion prescribe the forms of accounts, records and memoranda to be kept by such public utilities, including accounts, records and memoranda of the movement of traffic as well as of the receipts and expenditures

of money, and any other forms, records and memoranda which in the judgment of the commission may be necessary to carry out any of the provisions of this title. The system of accounts established by the commission and the forms of accounts, records and memoranda prescribed by it shall not be inconsistent, in the case of corporations subject to the provisions of the Act of Congress entitled, "An Act to Regulate Commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto, with the system and forms from time to time established for such corporations by the Interstate Commerce Commission; but nothing herein contained shall affect the power of the commission to prescribe forms of accounts, records and memoranda covering information in addition to that required by the Interstate Commerce Commission. The commission may, after hearing had upon its own motion or upon complaint, prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited. When the commission shall have prescribed the forms of accounts, records or memoranda to be kept by any public utility corporation for any of its business it shall thereafter be unlawful for such public utility to keep any accounts, records or memoranda for such business other than those so prescribed or those prescribed by or under the authority of any other state or of the United States, excepting such accounts, records or other memoranda as shall be explanatory of and supplemental to the accounts, records or memoranda prescribed by the commission.

No Change Since 1953

**54-4-24. Depreciation accounts and fund.**

The commission shall have power to require any or all public utilities to carry a proper and adequate depreciation account in accordance with such rules, regulations and forms of account as the commission may prescribe. The commission may from time to time ascertain, determine and, by order, fix the proper and adequate rates of depreciation of the several classes of property of each public utility. Each public utility shall conform its depreciation accounts to the rates so ascertained, determined and fixed, and shall set aside the money so provided for out of earnings and carry the same in a depreciation fund and expend such fund only for such purposes and under such rules and regulations, both as to original expenditure and subsequent replacement, as the commission may prescribe. The income upon investments of money in such fund shall likewise be carried in such fund.

No Change Since 1953

**54-4-25. Certificate of convenience and necessity prerequisite to construction and operation -- Electrical suppliers.**

(1) Except as provided in Section 11-13-304, a gas corporation, electric corporation, telephone corporation, telegraph corporation, heat corporation, water corporation, or sewerage corporation may not establish, or begin construction or operation of a line, route, plant, or system or of any extension of a line, route, plant, or system, without having first obtained from the commission a certificate that present or future public convenience and necessity does or will require the construction.

(2) This section may not be construed to require any corporation to secure a certificate for an extension:

- (a) within any city or town within which it has lawfully commenced operations;
- (b) into territory, either within or without a city or town, contiguous to its line, plant, or system that is not served by a public utility of like character; or
- (c) within or to territory already served by it, necessary in the ordinary course of its business.

(3) If any public utility in constructing or extending its line, plant, or system interferes or may interfere with the operation of the line, plant, or system of any other public utility already constructed, the commission, on complaint of the public utility claiming to be injuriously affected, may, after a hearing, make an order and prescribe the terms and conditions for the location of the lines, plants, or systems affected as the commission determines are just and reasonable.

(4) (a) (i) Each applicant for a certificate shall file in the office of the commission evidence as required by the commission to show that the applicant has received or is in the process of obtaining the required consent, franchise, or permit of the proper county, city, municipal, or other public authority.

(ii) If the applicant is in the process of obtaining the required consent, franchise, or permit, a certificate shall be conditioned upon:

(A) receipt of the consent, franchise, or permit within the time period the commission may direct; and

(B) the filing of such evidence of the receipt of the consent, franchise, or permit as the commission may require.

(b) Each applicant, except an interlocal entity defined in Section 11-13-103, shall also file in the office of the commission a statement that any proposed line, plant, or system will not conflict with or adversely affect the operations of any existing certificated fixed public utility which supplies the same product or service to the public and that it will not constitute an extension into the territory certificated to the existing fixed public utility.

(c) The commission may, after a hearing:

- (i) issue the certificate as requested;
- (ii) refuse to issue the certificate; or
- (iii) issue the certificate for the construction of a portion only of the contemplated line, plant, or system, or extension thereof, or for the partial exercise only of the right or privilege.

(d) The commission may attach to the exercise of the rights granted by the certificate the terms and conditions as in its judgment public convenience and necessity may require.

(e) (i) If a public utility desires to exercise a right or privilege under a franchise or permit which it contemplates securing but which has not yet been granted to it, the public utility may apply to the commission for an order preliminary to the issue of the certificate.

(ii) The commission may make an order declaring that it will upon application, under rules and regulations as it may prescribe, issue the desired certificate upon terms and conditions as it may designate after the public utility has obtained the contemplated franchise or permit.

(iii) Upon presentation to the commission of evidence satisfactory to it that the franchise or permit has been secured by the public utility, the commission shall issue the certificate.

(5) (a) Any supplier of electricity which is brought under the jurisdiction and regulation of the Public Service Commission by this title may file with the commission an application for a certificate of convenience and necessity, giving the applicant the exclusive right to serve the customers it is serving in the area in which it is serving at the time of this filing, subject to the existing right of any other electrical corporation to likewise serve its customers in existence in the area at the time.

(b) The application shall be prima facie evidence of the applicant's rights to a certificate, and the certificate shall be issued within 30 days after the filing, pending which, however, the applicant shall have the right to continue its operations.

(c) Upon good cause shown to the commission by anyone protesting the issuance of such a certificate, or upon the commission's own motion, a public hearing may be held to determine if the applicant has sufficient finances, equipment, and plant to continue its existing service. The commission shall issue its order within 45 days after the hearing according to the proof submitted at the hearing.

(d) Every electrical corporation, save and except those applying for a certificate to serve only the customers served by applicant on May 11, 1965, applying for a certificate shall have established a ratio of debt capital to equity capital or will within a reasonable period of time establish a ratio of debt capital to equity capital which the commission shall find renders the electrical corporation financially stable and which financing shall be found to be in the public interest.

(6) Nothing in this section affects the existing rights of municipalities.

(7) The commission shall consolidate an action filed under Chapter 17, Part 3, Resource Plans and Significant Energy Resource Approval or Part 4, Voluntary Request for Resource Decision Review with a proceeding under this section if:

(a) a public utility is required to obtain a certificate of convenience and necessity pursuant to this section; and

(b) the public utility files an action under Chapter 17, Part 3, Resource Plans and Significant Energy Resource Approval or Part 4, Voluntary Request for Resource Decision Review.

Amended by Chapter 11, 2005 General Session

#### **54-4-26. Contracts calling for expenditures -- Commission to approve.**

Every public utility when ordered by the commission shall, before entering into any contract for construction work or for the purchase of new facilities or with respect to any other expenditures, submit such proposed contract, purchase or other expenditure to the commission for its approval; and, if the commission finds that any such proposed contract, purchase or other expenditure diverts, directly or indirectly, the funds of such public utility to any of its officers or stockholders or to any corporation in which they are interested, or is not proposed in good faith for the economic benefit of such public utility, the commission shall withhold its approval of such contract, purchase or other expenditure, and may order other contracts, purchases or expenditures in lieu thereof for the legitimate purposes and economic welfare of such public utility.

No Change Since 1953

**54-4-27. Payment of dividends -- Notice -- Restraint.**

(1) No gas or electric corporation doing business in this state shall pay any dividend upon its common stock prior to 30 days after the date of the declaration of such dividend by the board of directors of such utility corporation.

(2) Within five days after the declaration of such dividend the management of such corporation shall:

(a) notify the utilities commission in writing of the declaration of said dividend, the amount thereof, the date fixed for payment of the same; and

(b) publish a notice, including the information described in Subsection (2)(a):

(i) in a newspaper having general circulation in the city or town where its principal place of business is located; and

(ii) as required in Section 45-1-101.

(3) If the commission, after investigation, shall find that the capital of any such corporation is being impaired or that its service to the public is likely to become impaired or is in danger of impairment, it may issue an order directing such utility corporation to refrain from the payment of said dividend until such impairment is made good or danger of impairment is avoided.

(4) The district court of any county in which said utility is doing business in this state is authorized upon a suit by the commission to enforce the order of the commission, and empowered to issue a restraining order pending final determination of the action.

Amended by Chapter 388, 2009 General Session

**54-4-28. Merger, consolidation, or combination.**

No public utility shall combine, merge nor consolidate with another public utility engaged in the same general line of business in this state, without the consent and approval of the Public Service Commission, which shall be granted only after investigation and hearing and finding that such proposed merger, consolidation or combination is in the public interest.

Amended by Chapter 9, 2001 General Session

**54-4-29. Acquiring voting stock or securities of like utility only on consent of commission.**

Hereafter no public utility shall purchase or acquire any of the voting securities or the secured obligations of any other public utility engaged in the same general line of business without the consent and approval of the Public Service Commission, which shall be granted only after investigation and hearing and finding that such purchase and acquisition of such securities, or obligations, will be in the public interest.

Amended by Chapter 9, 2001 General Session



**54-4-30. Acquiring properties of like utility only on consent of commission.**

Hereafter no public utility shall acquire by lease, purchase or otherwise the plants, facilities, equipment or properties of any other public utility engaged in the same general line of business in this state, without the consent and approval of the Public Service Commission. Such consent shall be given only after investigation and hearing and finding that said purchase, lease or acquisition of said plants, equipment, facilities and properties will be in the public interest.

Amended by Chapter 9, 2001 General Session

**54-4-31. Electrical corporation to issue securities only on consent of commission -- Exceptions -- Validity of securities.**

(1) Except as provided by Subsection (2) or (4), without prior written approval of the commission, no electrical corporation may:

- (a) issue any security; or
- (b) assume any obligation or liability as guarantor, endorser, surety, or otherwise, for any security of another person relating to the financing of pollution control revenue bonds.

(2) (a) Authorization of the commission is not required for the issuance or renewal of, or assumption of liability on, a note or draft if:

- (i) the maturity date of the note or draft is not more than one year after the date of the issue, renewal, or assumption of liability; and
- (ii) the aggregate value of the note or draft together with all other outstanding notes and drafts of a maturity of one year or less on which the public utility is primarily or secondarily liable is not more than 5% of the par value of the other outstanding securities of the public utility.

(b) In the case of securities having no par value, the par value for the purpose of this section is the fair market value as of the date of issue.

(3) Any securities issued pursuant to an order entered by authority of this section shall be valid notwithstanding the outcome of any further proceedings, unless:

- (a) application for stay is filed with a court of competent jurisdiction within five days following the issuance of the order; and
- (b) a stay is entered by the commission or a court of competent jurisdiction within 10 days after the order is issued.

(4) The commission may by rule, or by order pursuant to standards promulgated by rule, exempt any security, class of securities, electrical corporation, or class of electrical corporation from the requirement of Subsection (1), subject to any terms and conditions prescribed in the order or rule, if it finds that the application of Subsection (1) to the security, class of securities, electrical corporation, or class of electrical corporation is not required by the public interest.

Amended by Chapter 206, 1997 General Session

**54-4-37. Definitions -- Unauthorized charge to account -- Penalties -- Procedures for verification -- Authority of commission and Division of Public**

## **Utilities.**

- (1) For purposes of this section:
  - (a) "Agents" includes any person representing a public utility for purposes of billing for a service or merchandise from a third-party supplier.
  - (b) "Billing aggregator" means any person that:
    - (i) initiates charges;
    - (ii) combines or aggregates charges from third-party suppliers of services or merchandise; or
    - (iii) (A) creates bills for account holders; and
    - (B) passes these bills for the billing of account holders to:
      - (I) another billing aggregator; or
      - (II) a public utility.
  - (c) (i) "Public utility" is as defined in Section 54-2-1.
  - (ii) "Public utility" does not include a telecommunications corporation providing only mobile wireless service or Internet access.
  - (d) "Subscriber" means a person or government or a person acting legally on behalf of a person or government who authorizes a charge from a third-party provider of service or merchandise.
  - (e) (i) "Third party" means any person other than the account holder and the public utility.
  - (ii) "Third party" includes:
    - (A) a billing aggregator;
    - (B) a public utility;
    - (C) a nonpublic utility provider of services and merchandise;
    - (D) those persons billing for services or merchandise; and
    - (E) those persons verifying a subscriber's authorization.
  - (iii) "Third party" does not include:
    - (A) an affiliated or subsidiary company of a public utility whose charges the commission determines by rule would be reasonably associated by a subscriber with the type of charges that would appear on that particular public utility's bill;
    - (B) a presubscribed local or long distance telecommunications corporation or its affiliated or subsidiary company as to charges for local or long distance telephone, data, or wireless services.
- (2) This section does not apply to:
  - (a) telecommunications services that are used, initiated, or requested by the customer, including dial-around services such as:
    - (i) 10-10-XXX;
    - (ii) 1-900 numbers;
    - (iii) directory assistance;
    - (iv) operator-assisted calls;
    - (v) acceptance of collect calls; and
    - (vi) other casual calling by the customer;
  - (b) changes in telecommunications providers regulated by Section 54-8b-18;
  - (c) the provision of any charges for financing by an affiliated or subsidiary company of a public utility in connection with the purchase of services or merchandise if there is a written agreement for the financing between the customer and the affiliated or

subsidiary company; or

(d) except for Subsections (5) and (6), services provided by any of the following that are billed through a public utility:

- (i) a city;
- (ii) a town; or
- (iii) a county.

(3) Pursuant to this section, a public utility may not charge an account holder for services the account holder never:

- (a) ordered; or
- (b) knowingly authorized.

(4) A public utility shall ensure that its account holders receive:

(a) identification of a third-party provider of services or merchandise;

(b) upon subscriber request, toll-free numbers to enable a subscriber to contact the third party to resolve disputes;

(c) a clear, concise description of services or merchandise being billed;

(d) highlight or identification of each service or merchandise different from prior billing cycle services or merchandise;

(e) clear identification of the payment amount needed for each service or merchandise to ensure that any public utility service will continue;

(f) prompt and courteous treatment of all disputed charges; and

(g) information about the provisions in Subsections (5) and (6).

(5) (a) Unless specifically instructed by the account holder, each public utility shall first apply all payments received to the account holder's bill for the public utility's own tariffed utility services.

(b) Any remaining credit after the application of payment under Subsection (5)(a) shall be allocated proportionally to other charges, unless otherwise specified by the account holder.

(6) A public utility may not disconnect or threaten disconnection of any account holder's basic utility service for failure to pay third-party charges.

(7) Accounts receivable purchased by a public utility from third parties may not be treated as public utility charges regardless of the service or product upon which the account receivable is based.

(8) (a) If an account holder informs the public utility that a third-party service or merchandise charge is neither knowingly used nor authorized, or the charge in whole or part is disputed, the public utility shall:

(i) (A) immediately credit the account holder's account for the disputed amount; and

(B) refer the matter back to the third party for collection; or

(ii) suspend the account holder's obligation of payment of the disputed amount until it is determined whether the charge was either knowingly used or authorized.

(b) The public utility may not request the account holder to contact the third party to resolve the dispute prior to applying the credit under Subsection (8)(a).

(c) The disputed charge shall be removed from the public utility's bill to the account holder no later than two billing cycles following the billing cycle during which the complaint or dispute is registered unless it is later determined that the charge was authorized and the account holder is required to pay the charge.

(d) Immediately upon the account holder's first complaint or inquiry, the public utility shall inform the account holder of:

- (i) the process provided in this Subsection (8); and
- (ii) the account holder's options.

(e) Except as provided in Subsection (8)(c), once the charges have been removed from the account holder's utility bill:

- (i) the third party may not use the utility bill to:
  - (A) rebill the charges; or
  - (B) further attempt to collect the charge; and
- (ii) the public utility may not allow any further collection attempts by the third party to involve the utility bill.

(9) (a) If requested by the account holder, a public utility shall provide the account holder with toll-free numbers supplied by the provider of the service or merchandise, so the account holder may contact the third-party supplier of the services or merchandise billed.

(b) The public utility responsibility prescribed by Subsection (9)(a) applies through all layers of third parties, including:

- (i) public utilities;
- (ii) service providers;
- (iii) merchandise providers;
- (iv) affiliate billing companies; or
- (v) billing aggregators.

(c) A public utility shall perform due diligence to acquire the information required under this Subsection (9) from any provider for whom it bills.

(10) A third-party provider of services or merchandise may not request a public utility to bill its charges unless and until it:

- (a) has provided to the public utility valid toll-free numbers to enable a subscriber to contact the third-party to resolve any disputed charges;
- (b) has provided updated toll-free numbers to the public utility upon any change in the numbers; and
- (c) has received authorization from the subscriber for the service or merchandise through:

- (i) obtaining the subscriber's written authorization;
- (ii) having the subscriber's oral authorization verified by an independent verifier;

or

- (iii) any means provided by rule of the commission.

(11) If the subscriber is not an individual, an authorization shall be valid only if given by an authorized representative of the subscriber.

(12) The written authorization for the service or merchandise described in Subsection (10) shall:

- (a) be signed by the subscriber; and
- (b) contain a clear, conspicuous, and unequivocal request by the subscriber for the service or merchandise.

(13) The confirmation by a verifier shall, at a minimum:

- (a) (i) confirm the subscriber's identity with information unique to the customer;

or

(ii) if the customer refuses to provide identifying information, note the fact that the customer would not provide the identifying information;

(b) confirm that the subscriber requests the service or merchandise be provided by the third party; and

(c) confirm that the subscriber has the authority to request the service or merchandise be provided by the third party.

(14) A verifier shall meet each of the following:

(a) any criteria set for verifiers by the commission;

(b) not be directly or indirectly managed, controlled, directed, or owned wholly or in part by:

(i) the public utility on whose bill the charge will appear;

(ii) a third-party provider;

(iii) an agent of a public utility or third-party provider that seeks to provide the service or merchandise;

(iv) a person who directly owns or indirectly manages, controls, directs, or owns more than 5% of the public utility or third-party provider described in Subsection (14)(b)(i) or (ii);

(v) the marketing entity that seeks to market the third-party provider's service or merchandise; or

(vi) any person who directly or indirectly manages, controls, or owns more than 5% of the marketing entity described in Subsection (14)(b)(v);

(c) operate from facilities physically separated from those facilities of:

(i) the public utility on whose bill the charge will appear;

(ii) the third party or its agents that seek to provide the service or merchandise to the subscriber; or

(iii) the marketing entity that seeks to market the third-party provider's service or merchandise to the subscriber; and

(d) not derive commissions or compensation based upon the number of authorizations verified.

(15) A verifier that obtains the subscriber's oral verification regarding the change shall record that verification by obtaining the appropriate verification data.

(16) (a) The record verifying a subscriber's request for a third-party to provide services or merchandise shall be available to the subscriber upon request.

(b) Information obtained from the subscriber through verification may not be used for any other purpose.

(c) Any intentional unauthorized release of the information in violation of Subsection (16)(b) is grounds for:

(i) penalties or other action by the commission; or

(ii) remedies provided by law to the aggrieved subscriber against any of the following who is responsible for the violation:

(A) the third-party provider;

(B) the verifier;

(C) an agent or employee of the third-party provider or verifier.

(17) The verification shall occur in the same language as that in which the request was solicited.

(18) Each public utility shall allow account holders to prohibit the public utility

from billing for all or selected third parties for services or merchandise.

(19) (a) Each public utility shall maintain monthly records of the number of complaints about unauthorized charges that appear on a public utility bill.

(b) The records described in Subsection (19)(a) shall be available to the commission upon request.

(20) (a) Proceedings for violations of this section may be commenced by request for agency action filed with the commission by:

- (i) an account holder;
- (ii) a public utility;
- (iii) the Division of Public Utilities; or
- (iv) the commission on the commissioner's own motion.

(b) The remedies provided by this chapter are not exclusive and are in addition to all other causes of action, remedies, and penalties provided by law.

(21) Any public utility, its agents, or a third-party provider of goods or services who violates this section or rules adopted to implement this section shall be subject to Sections 54-7-23 through 54-7-29.

(22) The Division of Public Utilities shall have power to seek injunctive relief to stop repeated unauthorized violations of this section by a public utility or a third-party provider of service or merchandise.

(23) The commission is granted authority to:

- (a) enforce this section; and
- (b) implement rules to carry out the requirements of the section.

Amended by Chapter 139, 2001 General Session

**54-4-39. Natural gas derived from new technologies -- Long-term contracts.**

(1) As used in this section:

(a) "Coal-to-liquid" means the process of converting coal into a liquid synthetic fuel.

(b) "Long-term contract" means a contract greater than five years in duration, but no greater than 10 years in duration.

(c) "Oil shale" means a group of fine black to dark brown shales containing bituminous material that yields petroleum upon distillation.

(d) "Tar sands" means impregnated sands that yield mixtures of liquid hydrocarbon and require further processing other than mechanical blending before becoming finished petroleum products.

(2) The commission shall approve a long-term contract for the sale of natural gas derived from coal-to-liquid, oil shale, or tar sands technology to a utility if the commission considers the contract prudent.

Enacted by Chapter 346, 2006 General Session

**54-4-40. Approval of certain agreements between an electrical corporation and municipality.**

(1) The commission shall review an agreement entered into between an

electrical corporation and a municipality if the electrical corporation is required to obtain commission approval in accordance with Section 10-8-14, 54-3-30, or 54-3-31.

(2) The requirements of Subsection (1) do not confer jurisdiction on the commission to regulate any electric service provided by a municipality.

(3) Unless the commission determines that additional time is warranted and is in the public interest, no later than 120 days after the day on which an application to approve an agreement described in Subsection (1) is filed by an electrical corporation, the commission shall:

- (a) approve the agreement;
- (b) approve the agreement subject to conditions imposed by the commission; or
- (c) reject the agreement.

Enacted by Chapter 242, 2013 General Session